THE HONOURABLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6162 of 2007

% Dated 05.04.2007

Tadem Satish and others.

....Petitioners

$ The District Collector, Nalgonda and others.

....Respondents

! Counsel for petitioners: M.Vidyavathi
^Counsel for Respondents 1 to 4: G.P. for Co-operation
^Counsel for Respondents 5 to 15: Sri Ramakrishna Peeka

<GIST:

> HEAD NOTE:

? Cases referred

NIL

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6162 of 2007

Date: 05.04.2007

Between:

Tadem Satish and others.

....Petitioners

And

District Collector, Nalgonda, Nalgonda District and others.

....Respondents

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.6162 of 2007

O R D E R:

The petitioners claim to be the Members of the Fishermen Co-operative Society, Pangall Village, Nalgonda District, the third respondent herein. They assail the letter, dated 24.03.2007, issued by the Deputy Director of Fisheries, 4th respondent herein, and seek a consequential direction to the Election Officer, second respondent herein, to permit them to participate in the election, which is scheduled to be held on 19.04.2007. The term of the Managing Committee of the third respondent-Society expired on 28.03.2007. Well in advance, the Election Authority i.e., the first respondent, issued proceedings, dated 06.03.2007 appointing the second respondent as Election Officer and fixing the election programme. A direction was issued, to conduct the election through secret ballot system. Accordingly, the second respondent issued proceedings, dated 14.03.2007 fixing the election programme. He also requested the President of the Society, to furnish the voters' list and other relevant records of the Society, within seven days.

The President of the Society furnished the voters' list, containing the names of 930 members. Correspondence ensued between respondents 2 and 4 and ultimately, the voters' list was prepared, which

contained 379 names. The grievance of the petitioners is that the second respondent ignored the valid voters' list furnished by the President of the Society and in utter contravention of Rule 22 of the A.P. Co-operative Societies Rules, 1964 (for short 'the Rules'), he prepared voters' list, excluding not only their names but also that of more than 500 members. It is alleged that the said action of the second respondent is traceable to the impugned letter addressed by the 4th respondent.

On behalf of respondents 1, 2 and 4, a counter affidavit is filed. It is stated that the President of the Society did not furnish the voters' list within the stipulated time. The 4th respondent is said to have addressed the impugned letter, in view of the prevailing uncertainty, as to the admission of members in the year 2005. The respondents contend that the voters' list was prepared, after due verification of the records and that the election programme, which has already commenced, cannot be stalled, at this stage. Respondents 5 to 15 got themselves impleaded and opposed the relief claimed by the petitioners.

Heard the learned counsel for the petitioners, the learned Government Pleader for respondents 1 to 4 and the learned counsel for respondents 5 to 15.

The first respondent issued a notification contemplated under Rule 22 of the Rules on 06.03.2007, duly appointing the second respondent as Election Officer. Rule 22 of the Rules prescribes a very detailed procedure, in the matter of conducting elections to the Managing Committees of the Societies. The process commences with the appointment of Election Officer under sub-Rule (2) thereof. Thereafter, the Election Officer is required to secure records from the concerned person viz., the President of the Society or any executive authority, as the case may be. On verification of the records and on a consideration of the objections, that may be received by him, the Election Officer is required to publish the final list of voters, under Clause (vi) of Rule 22 (2) of the Rules. It reads as under:

> *"After receipt of the final list of members eligible to vote from the society, the Election Officer shall verify the cases and satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the act and Rules. [If there are any omissions or commissions noticed while scrutinizing the list, the Election Officer shall refer the same to the Chief Executive Officer or the President of the society for rectification. After such rectification, the Election Officer shall publish the final list of the voters along with the schedule as prescribed in Form I.]"*

In the present case, the second respondent took

necessary steps by issuing his proceedings dated 14.03.2007. In that letter, he stated that the election notice would be issued on 26.03.2007, the nominations would be received on 09.04.2007, and that they would be scrutinised on 10.04.2007. The date of withdrawal is notified as 11.04.2007 and the date of poll, counting of votes and declaration of results is notified as 19.04.2007. To comply with the steps to be taken before the publication of election notice, he required the President of the Society, to furnish the voters' list and other connected records. The voters' list, containing the names of 930 members, was received, though late by one day.

Through the impugned letter, the 4th respondent informed the second respondent that the membership of the Society is 379 and required him to conduct elections, as per the previous list, on the ground that permission was accorded to admission of members thereafter. The letter reads as under:

> *"I invite kind attention to your letter in the reference 2nd and 3rd cited, and informed that the Membership list for 379 Numbers of Fishermen Co.Operative Society Nalgonda furnished by the Fisheries Development Officer, Nalgonda vide reference 1st cited is correct and the same list previous election was conducted, and then after no membership was accorded permission by the Department.*
>
> *Therefore, the list furnished by the*

Fisheries Development Officer Nalgonda is valid and genuine and requested to act accordingly as per the list. "

It is relevant to note that the 4th respondent made a reference to the endorsement made by the Minister for Fisheries. The second respondent published the final list of voters on 26.03.2007 with 379 members.

Had the second respondent finalised the voters' list, after referring the omissions or commissions, if any, noticed by him, to the President of the Society, as required under Rule 22(2)(6) of the Rules, no objection could have been taken, for the exercise undertaken by him. From the counter affidavit filed on behalf of respondents 1,2 and 4, and the record, it is evident that the second respondent has not chosen to refer the matter to the President of the Society at all. When the Rule specifically mandates that the reference shall be made to the President alone, there was no basis for the second respondent in seeking the opinion of the 4th respondent and finalising the voters' list. There is a clear infraction of the mandate contained in Rule 22(2)(vi) of the Rules. Further, the difference is also phenomenal. A list of 930 voters was slashed down to 379. Had this result emerged, after compliance with the provisions referred to above, the occasion to interfere would have arisen.

It is true that this Court would hesitate and would not choose to interfere, once the election process has commenced. The disputes, if any, have to be resolved through Election Petitions. However, in the instant case, a serious irregularity, which had the effect of subverting the very sanctity of election, has taken place. The General Body of the Society is said to have admitted about 500 members in the year 2005. In the voters' list furnished by the President of the Society, the names of the newly admitted members were included. Exclusion of such persons from the list must be on the basis of a proper exercise, which accords with the relevant Rules. The simplest thing for the second respondent would have been to seek clarification of his doubts from the President of the Society.

It is noteworthy that the ultimate decision rests with the second respondent and this Court is concerned more with the decision making process than the decision itself. The Rule prescribed a clear and unequivocal process. If the same is violated with impunity or otherwise, this Court cannot ignore such blatant violation. The maximum, that would happen, in the event of the second respondent being required to comply with the Rule is that the election programme would be pushed ahead hardly by one week.

Rule 22 of the Rules itself contemplates that wherever election is stalled, for any reason, it shall be continued from the stage, where it was left. The corrective steps, at this stage, would avoid many controversies and uncertainties, apart from respecting the spirit of democracy.

For the foregoing reasons, the Writ Petition is disposed of, directing that

a) The voters' list published by the second respondent through his proceedings, dated 26.03.2007, shall not be treated as final;

b) The second respondent shall refer the commissions and omissions, if any, noticed by him in the voters' list made available to him by the third respondent-Society, to the President thereof as required under Rule 22(2)(6) of the Rules and thereafter, publish the voters' list, on consideration of the information received by him.

c) The second respondent shall publish a fresh election programme, duly maintaining the time gap between the dates of filing of nominations, scrutiny, withdrawal, date of polling etc., and to that extent, the notifications issued by respondents 1 and 2 on 06.03.2007 and

26.03.2007 shall stand modified.

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05.04.2007

Note: Issue C.C. tomorrow.

L.R.Copy to be marked.

(B/o)

JSU